

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

JAMES CARR,  
Plaintiff,

vs.

JOHN E. POTTER,  
Defendant.

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Case No. 3:10-cv-1809 (PCD)

**RULING ON MOTION TO DISMISS**

On November 18, 2010, Plaintiff, an employee of the United States Post Office, commenced this action against Defendant, the Postmaster General of the United States, alleging that he has been subject to discrimination, harassment, and a hostile environment at his workplace. On February 9, 2010, Defendant filed a motion to dismiss for failure to state a claim [Doc. No. 7]. Plaintiff has not filed a response to the motion. For the reasons stated herein, the motion is **granted**.

Defendant argues that the complaint must be dismissed because Plaintiff failed to initiate this action “[w]ithin 90 days of receipt of notice of the final action taken by” the Equal Employment Opportunity Commission (“EEOC”). 42 U.S.C. § 2000e-16(c). The complaint alleges that the EEOC’s Notice of Final Decision is dated July 21, 2010. (Compl. ¶ 6.) “A presumption exists that an EEOC notice is received three days after its mailing.” Sherlock v. Montefiore Med. Ctr., 84 F.3d 522, 525 (2d Cir. 1996) (quoting lower court’s opinion). Thus, it is presumed that Plaintiff received the notice on July 24, 2010, which is 117 days prior to the initiation of this lawsuit.

A Title VII action alleging federal employment discrimination filed more than 90 days after the final agency decision must be dismissed in the absence of a basis for equitable tolling.

See Colon v. Potter, 51 F. App'x 43, 46-47 (2d Cir. 2002). Plaintiff has stated no reason why the statute of limitations should be equitably tolled. Therefore, the Court finds that this action was not timely filed, and the motion to dismiss [Doc. No. 7] is **granted**.

SO ORDERED.

Dated at New Haven, Connecticut, this 22<sup>nd</sup> day of May, 2011.

/s/  
Peter C. Dorsey, U.S. District Judge  
United States District Court